

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 Kiara Wright-Hicks,

5 Plaintiff,

6 v.

7 Tropical Smoothie Cafe LLC,

8 Defendant.
9

Case No. 2:23-cv-00621-APG-BNW

ORDER

10 This matter is before the Court on *pro se* Plaintiff Kiara Wright-Hicks' application to
11 proceed *in forma pauperis* (ECF No. 1), filed on April 21, 2023. She submitted the declaration
12 required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for
13 them. ECF No. 1. Therefore, her request to proceed *in forma pauperis* is granted.

14 The Court now screens Plaintiff's complaint (ECF No. 1-1) as required by 28 U.S.C.
15 § 1915(e)(2).

16 **I. Screening the Complaint**

17 **A. Legal Standard**

18 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
19 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
20 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be
21 granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
22 § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard
23 for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
24 F.3d 1108, 1112 (9th Cir. 2012).

25 To survive § 1915 review, a complaint must "contain sufficient factual matter, accepted as
26 true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678
27 (2009) (internal quotation marks and citation omitted). The court liberally construes *pro se*
28 complaints and may only dismiss them "if it appears beyond doubt that the plaintiff can prove no

1 set of facts in support of his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762
2 F.3d 903, 908 (9th Cir. 2014) (*quoting Iqbal*, 556 U.S. at 678). In considering whether the
3 complaint is sufficient to state a claim, all allegations of material fact are taken as true and
4 construed in the light most favorable to the plaintiff. *Wylar Summit P’ship v. Turner Broad. Sys.*
5 *Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).

6 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a
7 plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*,
8 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
9 insufficient. *Id.* Unless it is clear the complaint’s deficiencies could not be cured through
10 amendment, a *pro se* plaintiff should be given leave to amend the complaint with notice regarding
11 the complaint’s deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

12 **B. Analysis**

13 Plaintiff’s complaint does not contain a lot of information. As best as the Court can tell,
14 Plaintiff is alleging that some discriminatory-type event took place on November 20, 2023, while
15 working at Tropical Smoothie on the basis of being female and pregnant. She also alleges that
16 retaliation took place. Plaintiff lists several statutes, but based on the few facts that appear in the
17 complaint, it appears Plaintiff is alleging Title VII claims for discrimination and retaliation.¹ At
18 this stage, based on the lack of factual allegations, the Court will dismiss the complaint without
19 prejudice and allow Plaintiff to file an amended complaint. The Court will provide the elements
20 for each of those two claims so that Plaintiff can provide facts that support each of those
21 elements.

22 **1. Title VII Discrimination**

23 To establish a prima facie case under Title VII, a plaintiff must offer proof: (1) that the
24 plaintiff belongs to a class of persons protected by Title VII; (2) that the plaintiff performed his or
25 her job satisfactorily; (3) that the plaintiff suffered an adverse employment action; and (4) that the
26 plaintiff’s employer treated the plaintiff differently than a similarly situated employee who does
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28 ¹ If Plaintiff intends to bring additional claims, she is free to add them to her amended complaint, as explained below.

1 not belong to the same protected class as the plaintiff. *See McDonnell Douglas Corp. v. Green*,
2 411 U.S. 792, 802 (1973).

3 Plaintiff needs to allege facts that support each of these elements. Currently, her complaint
4 does not explain how it is that she suffered an adverse employment action or how others (who did
5 not belong to her protected class) were treated differently.

6 **2. Title VII Retaliation**

7 To establish a prima facie case of retaliation under Title VII, an employee must show that
8 (1) she engaged in a protected activity; (2) her employer subjected her to an adverse employment
9 action; and (3) a causal link exists between the protected activity and the adverse action.
10 *Cheatham v. City of Phoenix*, 699 F. App'x 647, 648 (9th Cir. 2017) (citation omitted).

11 Plaintiff's complaint does not contain facts explaining what protected activity she engaged
12 in, what was the adverse employment action, or the link between the protected activity and the
13 adverse action. In her amended complaint, should she choose to file one, Plaintiff needs to allege
14 facts that support each of these elements.

15 **C. Amendment**

16 If Plaintiff chooses to amend, she must read this Order carefully and allege sufficient facts
17 to show that the requirements of each claim are met.

18 Additionally, Plaintiff is advised that if she files an amended complaint, the original
19 complaint (ECF No. 1-1) will no longer serve any function in this case. The amended complaint
20 must be complete in and of itself without reference to prior pleadings or to other documents.

21 **II. Conclusion**

22 **IT IS THEREFORE ORDERED** that Plaintiff Kiara Wright-Hicks' application to
23 proceed *in forma pauperis* (ECF No. 1) is GRANTED. Plaintiff is permitted to maintain this
24 action to conclusion without prepaying fees or costs or giving security for them.

25 **IT IS FURTHER ORDERED** that the Clerk of Court must detach and separately file
26 Plaintiff's complaint (ECF No. 1-1).

27 **IT IS FURTHER ORDERED** that Plaintiff's complaint (ECF No. 1-1) is DISMISSED
28 without prejudice.

DATED: May 1, 2023.

Page 4 of 4